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TO: Douglas Fischer, Esq. NO: 212-637-3096

TO: _____ NO: _____

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FROM: Jonathan A. Murphy

RE: Carroll & Dubies Superfund Site, Response To Reynolds Metal's
De Minimis Application

CLIENT/MATTER NO. 527-4001

No. of Pages 4
(includes cover sheet)

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July 5, 1995

Via Fax: 212-637-3096
 Office of Regional Counsel
 New York/Caribbean Superfund Branch
 U.S. Environmental Protection Agency
 Region II
 290 Broadway
 New York, New York 10007-1866

Att: Douglas Fischer, Esq.
Assistant Regional Counsel

Re: Carroll & Dubies Superfund Site
 Administrative Order on Consent
 Index No.: II CERCLA-00202
 Our File No.: 527-4001

Dear Mr. Fischer:

This letter is written on behalf of Kolmar Laboratories, Inc. and Wickhen Products, Inc. in response to the June 14, 1995 letter from Reynolds Metals Company, and in response to your telephone request regarding any additional comments or response we might provide to BPA regarding Reynolds' request for de minimis status.

We trust this additional response will assist EPA in addressing Reynolds' de minimis status application. EPA specifically requested that we make reference to any specific documents or information relevant to the issue of de minimis status.

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We refer to the Phase II investigation of the Carroll & Dubies site prepared by Wehran Engineering, P.C. of Middletown, New York, dated February, 1987. Annexed as an exhibit to that report was, among others, a May 1979 letter from Buck, Seifert & Jost, consulting engineers. In a letter to George Hanson of the NYSDEC, Joseph Meisler of Buck, Seifert & Jost expounded on the major contaminants found in the Kolmar and Wickhen waste water transported by Carroll & Dubies to the subject site.

As you can see, the constituent components of the waste water discussed in that letter do not include the volatile and semi-volatile organic compounds which are of concern at this site. Indeed, conspicuously absent from the waste water (as characterized at that time) are any organic solvents; initial speculation by the NYSDEC regarding the constituent make-up of the Kolmar and Wickhen waste water streams was based upon sampling taken from lagoons on site and did not at that time contemplate that Reynolds had shipped waste products with chemicals of concern for deposit in the same lagoons.

Reynolds continues to assert its June 14, 1995 response letter that it has made no assumptions regarding the composition of the waste water at issue, but at the same time continues to maintain that Kolmar's and Wickhen's waste "contained hazardous substances." Reynolds asks EPA to render a decision on their share of liability based upon their submittal to date, and asks EPA to further assume that the wastes of Reynolds, Kolmar and Wickhen be considered roughly equal in terms of toxicity.

The Wehran Engineering Phase II report contradicts this assertion, and supports our contention that the waste water shipments to the Carroll & Dubies site did not contain any chemicals of concern. In the minimum, before an intelligent and accurate share of liability can be assessed against Reynolds, further investigation and discovery regarding available witnesses, documents and the characteristics of the appropriate waste streams must be developed.

Kolmar and Wickhen continue to maintain that without this further discovery and investigation, any assessment of Reynolds' share of liability by EPA would be premature and made in the absence of adequate documentation and information which may be available but has not yet been requested or produced.

More importantly, documentation already in the possession of EPA contradicts the position currently taken by Reynolds, in itself an adequate basis for denying Reynolds' request for de minimis treatment.

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We remain available to respond to any specific inquiries EPA may have with regard to this issue.

Sincerely,

LESTER SCHWAB KATZ & DWYER
Attorneys for KOLMAR LABORATORIES

BY:

Jonathan A. Murphy
JONATHAN A. MURPHY

GOLD & WILKIE
Attorneys for WICKHEN PRODUCTS

BY:

S/
ROBERT J. GLASSER

JAM:ltl

cc:

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1/80
- Bud see "Site Narrative" that immediately follows the Bud et al report. @ 3, Bernie Duestel of Wickhen made that in "past years" Wickhen used CO-D to dispose of benzene waste @ Port Service Chem Dump
26/1/79 DEC comes to Rod denying their SCPEs permit LEAD SITE
because, among other things, the Wickhen waste contained (metals) and benzene, and Kolmar had not submitted an individual chemical sample form.